

THE UNITED STATES OF AMERICA

Plaintiff,

v.

MASTERWEAR CORPORATION,
JAMES A. REED, LINDA LOU MULL
REED, WILLIAM J. CURE, AND
ELIZABETH J. CURE

Defendants.

No. 1:05-cv-00373-JDT-WTL

Judge John Daniel Tinder

Magistrate Judge William T. Lawrence

CONSENT DECREE

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (“CERCLA”), 42 U.S.C. § 9607, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Masterwear Superfund Site in Martinsville, Morgan County, Indiana (“the Site”) and a declaration regarding the liability of each of the Defendants for further response costs.

B. On April 19, 2004, EPA issued a Unilateral Administrative Order (“UAO”) to certain Settling Defendants pursuant to CERCLA Section 106, 42 U.S.C. § 9606, requiring the removal of hazardous substances from the Site and neighboring properties contaminated by hazardous substances from the Site.

C. Prior to the execution of this Consent Decree, the Ohio Casualty Insurance Company (“OCIC”) had been funding the work required under the UAO on behalf of its insureds Masterwear Corporation, James Reed, and Linda Lou Reed.

D. The Settling Defendants have obtained the agreement of certain of their respective insurance carriers, subject to their execution of separate and confidential agreements and releases, to: 1) pay the United States response costs, totaling Three Hundred and Eighty Thousand Dollars (\$380,000); and 2) to continue to perform and fund the remaining work under the UAO. Settling Defendants represent that their agreements with their insurance carriers

contain the following operative terms:

1. Hoosier Insurance Company: The Hoosier Insurance Company (“Hoosier”) will make payments totaling One Hundred Ninety Thousand Dollars (\$190,000) for the United States’ response costs incurred in connection with the UAO. In the event that the cost of future UAO work exceeds the policy limits of the OCIC policies pursuant to paragraph D.3, Hoosier will pay one half of the exceedance subject to any contribution or subrogation rights Hoosier may have at the time of payment, individually and as subrogee of the Cure Settling Defendants. However, any contribution or subrogation rights that Hoosier may have at the time of payment of future UAO work shall not prevent immediate payment of those costs by Hoosier. Hoosier will make these payments on behalf of its insured, the Cure Settling Defendants, as a part of a negotiated and compromised settlement, without admitting that it is required to do so and without admitting any liability or responsibility to do so under the Hoosier Policies issued to the Cure Settling Defendants. Hoosier also will make these payments without waiver of any reservation of rights positions previously set forth in correspondence addressed to Mr. Cure and Hoosier specifically reserves and preserves all such positions under the Hoosier Policies and at law. Hoosier’s payments pursuant to the terms of this Consent Decree shall not be used as evidence or an admission of liability under the Hoosier Policies in any other proceeding.

2. United States Fidelity and Guaranty Company: United States Fidelity and Guaranty Company (“USF&G”) will make payments totaling One Hundred Ninety Thousand Dollars (\$190,000) for the United States’ response costs incurred in connection with the UAO. In the event that the cost of the future UAO work exceeds the policy limits of OCIC policies pursuant to paragraph D. 3, USF&G will pay one half of the exceedance subject to any

contribution or subrogation rights USF&G may have at the time of payment, individually and as subrogee of the Cure Settling Defendants. However, any contribution or subrogation rights that USF&G may have at the time of payment of future UAO work shall not prevent immediate payment of those costs by USF&G. USF&G will make these payments on behalf of its insureds, the Cure Settling Defendants, as a part of a negotiated and compromised confidential settlement, without admitting that it is required to do so and without admitting liability or responsibility to do so under the USF&G Policies issued to the Cure Settling Defendants. USF&G also will make these payments without waiver of any reservation of rights positions previously set forth in correspondence addressed to Mr. Cure and USF&G specifically reserves and preserves all such positions under the USF&G Policies and at law. USF&G's payments pursuant to the terms of this Consent Decree shall not be used as evidence or an admission of liability under the USF&G Policies in any other proceeding.

3. The Ohio Casualty Insurance Company: The Ohio Casualty Insurance Company ("OCIC") will continue to directly fund future UAO work until the maximum applicable limits of liability under the OCIC policies are exhausted. As of October 31, 2006, OCIC contends that it has paid \$1,364,548.63 in indemnity payments under its three policies and believes that the remaining amount of indemnity coverage under the OCIC policies is One Hundred Thirty Five Thousand Four Hundred and Fifty One Dollars (\$135,451).

E. The United States and the Settling Defendants have reached a resolution of this matter, as delineated under the terms of this Consent Decree.

F. The Parties agree, and this Court by entering this Consent Decree finds, that this

Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter

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will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Settling Defendants and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Cure Settling Defendants" shall mean William J. Cure and Elizabeth J. Cure and Cure Construction Consulting, Inc d/b/a Cure Construction.
- d. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies, or instrumentalities of the United States.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.
- g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, incurred on or after May 1, 2006, by EPA and DOJ on behalf of EPA in connection with overseeing Settling Defendants' implementations of the remedial measures under the April 19, 2004 UAO. In addition, Future Response Costs shall include Interest on all of the foregoing costs.
- i. "Hoosier" shall mean The Hoosier Insurance Company.

j. "Hoosier Policies" shall mean all known and unknown policies of insurance issued by Hoosier to William J. Cure and Elizabeth J. Cure including, but not limited to, the annual Office Business Owners Policies issued to the Cure Settling Defendants between July 29, 1993 and July 29, 2000, under policy number BO 0082615, and the annual Commercial Marketplace Policies issued to the Cure Settling Defendants between July 29, 2000 and July 29, 2005, under policy number CS 0298539.

k. "Insurance Companies" shall mean Hoosier Insurance Company, The Ohio Casualty Insurance Company, and the United States Fidelity and Guaranty Company.

l. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

m. "Masterwear Settling Defendants" shall mean Masterwear Corporation, James A. Reed, and Linda Lou Mull Reed.

n. "OCIC" shall mean The Ohio Casualty Insurance Company and shall also include any predecessors, successors, assigns, parent corporations, subsidiaries, affiliates and agents, and their officers, directors, employees, agents, shareholders, and representatives.

o. "OCIC Policies" shall mean the policies of insurance issued by American Alliance Insurance Company to one or more of the Settling Defendants, bearing the following policy numbers: PAC 1-16-27-97 (November 22, 1988, to November 22, 1989) issued to Masterwear, Inc; PAC 1-16-27-97-01 (November 22, 1989, to November 22, 1990) issued to

Masterwear, Inc.; and, PAC 2-26-09-39 (November 22, 1990, to November 22, 1991) issued to Masterwear, Inc. and Jim Reed.

p. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

q. "Parties" shall mean the United States and Settling Defendants.

r. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has paid at or in connection with the Site through April 30, 2006, plus accrued Interest on all such costs through such date.

s. "Plaintiff" shall mean the United States.

t. "RCRA" shall mean the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*

u. "Response Costs" shall mean Past Response Costs and Future Response Costs incurred and to be incurred in connection with the Unilateral Administrative Order issued by EPA to William J. Cure and James A. Reed on April 19, 2004.

v. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

w. "Settling Defendants" shall mean Masterwear Corporation, James A. Reed, Linda Lou Mull Reed, William J. Cure, Elizabeth J. Cure and Cure Construction Consulting Inc. d/b/a Cure Construction.

x. "Site" shall mean the Masterwear Superfund site, encompassing approximately eight acres, located at 28½ North Main Street and 60-80 West Washington Street

in Martinsville, Morgan County, Indiana, and generally shown on the map included in Appendix A.

y. “UAO” shall mean the Unilateral Administrative Order issued by EPA to William J. Cure and James A. Reed on April 19, 2004.

z. “USF&G” shall mean the United States Fidelity and Guaranty Company.

aa. “USF&G Policies” shall mean all known and unknown policies of insurance issued by USF&G to the Cure Settling Defendants, including but not limited to those policies of insurance issued to Cure Realty and/or William J. & Elizabeth J. Cure bearing the following policy numbers: BSP071267504 (July 29, 1985, to July 29, 1986); BSP081563560 (July 29, 1986, to July 29, 1987); BSP086203139 (July 29, 1987, to July 29, 1988); BSP091454242 (July 29, 1988, to July 29, 1989); BSP11559204800 (July 29, 1989, to July 29, 1990); BSP11568073000 (July 29, 1990, to July 29, 1991); BSP11568073001 (July 29, 1991, to July 29, 1992); and, BSP11568073002 (July 29, 1992, to July 29, 1993).

bb. “United States” shall mean the United States of America, including its departments, agencies, and instrumentalities.

V. OBJECTIVES

4. The objectives of the Parties in entering into this Consent Decree are to reimburse the United States’ Response Costs and to resolve the claims of the United States against Settling Defendants as provided in this Consent Decree. The Settling Defendants have completed most of the removal work required under the UAO, and intend to complete the required remaining work. This Consent Decree shall not affect the Settling Defendants’ obligations under the UAO.

VI. PAYMENT OF RESPONSE COSTS

5. Payment of Response Costs to EPA Hazardous Substance Superfund The Settling Defendants through their Insurance Companies shall pay a total of Three Hundred Eighty Thousand Dollars (\$380,000) in reimbursement of the United States' Response Costs and shall to continue to fund future work required by UAO as follows:

a. Payment by Cures through Hoosier Insurance Company: Within thirty (30) days of notice to Mr. Theodore J. Blanford, of Hume Smith Geddes Green & Simmons, LLP, 54 Monument Circle, 4th Floor, Indianapolis, Indiana 46204, counsel for Hoosier, of the entry of this Consent Decree, Settling Defendants the Cures, through their carrier Hoosier, will pay to the United States One Hundred Ninety Thousand Dollars (\$190,000) according to the instructions set forth in Paragraph 6.

b. Payment by Cures through USF&G: Within thirty (30) days of notice to Stephen P. Brown, Esq., Plunkett & Cooney, PC, 38505 Woodward Avenue, Suite 2000, Bloomfield Hills, Michigan 48304, counsel for USF&G, of the entry of this Consent Decree, Settling Defendants the Cures, through their carrier USF&G, will pay to the United States One Hundred Ninety Thousand Dollars (\$190,000) according to the instructions set forth in Paragraph 6.

6. Payments to the United States shall be made by bank draft to be issued in the ordinary course of business and sent to the attention of the United States Attorney's Office, Southern District of Indiana, 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204 referencing USAO File Number 2005V00252, the EPA Region and Site/Spill Identification Number B57N, and DOJ Case Number 90-11-3-08498. Any payments received by the Department of Justice

after 4:00 p.m. Eastern Time shall be credited on the next business day. Notice of such payments shall be sent to the Region 5 Comptroller, U.S. EPA, 77 W. Jackson Blvd., 10th Floor, Chicago, IL 60604.

7. At the time of payment, Settling Defendants and/or Insurance Companies shall also send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number B57N, DOJ case number 90-11-3-08498, and the civil action number.

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Masterwear Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. PAYMENT OF FUTURE UAO COSTS

9. In addition to the payment of EPA's Response Costs as provided under paragraphs 5. a. and b., the Settling Defendants further agree to fund Future UAO work at the Site as follows:

a. Settling Defendants, the Masterwear Defendants, through their carrier OCIC, shall continue to fund the remaining reasonable and necessary costs of the UAO work until either the work is completed or until the maximum applicable limits of liability under the OCIC Policies are exhausted. Should any future UAO work be incurred after the limits of liability of the OCIC Policies have been exhausted, those costs will be paid by Settling Defendants, the Cures through their carriers, Hoosier and USF&G, subject to any contribution or subrogation rights Hoosier and USF&G may have at the time of payment individually and as subrogees of the Cure Settling Defendants. However, any contribution or subrogation rights that Hoosier and

USF&G may have at the time of payment of future UAO costs shall not prevent immediate payment of those costs by Hoosier and USF&G respectively.

b. Payment of future UAO work will continue to be paid by the Masterwear Settling Defendants through their carrier OCIC directly to the performing contractor until either work is completed or until the applicable limits of liability under the OCIC policies are exhausted. The Masterwear Settling Defendants shall give notice within thirty (30) days of OCIC's position concerning the exhaustion of the policy limits, by exhaustion through payment or by court order, to Mr. Theodore J. Blanford, of Hume Smith Geddes Green & Simmons, LLP, 54 Monument Circle, 4th Floor, Indianapolis, IN 46204, counsel for Hoosier, and to Stephen P. Brown, Esq., Plunkett & Cooney, PC, 38505 Woodward Avenue, Suite 2000, Bloomfield Hills, Michigan 48304, counsel for USF&G, and to EPA and DOJ in accordance with Section XVI. This Consent Decree provision is not to be interpreted to bind any of the Insurance Carriers, who are not parties to this Decree, to any exhaustion position stated on behalf of OCIC in the absence of a judicial determination or specific settlement agreement providing for exhaustion of OCIC policy limits.

c. Within thirty (30) days of receipt of OCIC's notice of exhaustion, Settling Defendants the Cures through their carriers, Hoosier and USF&G, will direct payment of costs to complete the future UAO work in excess of the OCIC policy limits to the performing contractor and will give EPA and DOJ notice of such payment pursuant to Section XVI.

VIII. FAILURE TO COMPLY WITH CONSENT DECREE

10. If the United States brings an action to enforce this Consent Decree, Settling

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Defendants shall reimburse the United States for all costs of such action, including, but not limited to, costs of attorney time.

11. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more of the Insurance Companies and/or Settling Defendants to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

IX. COVENANTS BY THE UNITED STATES

12. In consideration of the actions that will be performed and the payments that will be made under the terms of this Consent Decree, except as specifically provided in Section X (Reservation of Rights), the United States covenants not to sue or take administrative action against the Settling Defendants pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, to recover Response Costs as defined under this Consent Decree.

X. RESERVATIONS OF RIGHTS BY THE UNITED STATES

13. The covenants contained in Section IX (Covenants by the United States) extend only to the named party(ies) therein and do not extend to any other person.

14. The covenants not to sue set forth in Section IX (Covenants by the United States) do not pertain to any matters other than those expressly specified therein, and do not extend to any other person or entity other than those specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendants with respect to all other matters, including, but not limited to, the following:

- a. claims based on a failure by the Settling Defendants to meet
a requirement of this Consent Decree;

- b. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances, pollutants, or contaminants outside the Site;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. liability for future disposal of hazardous substances, pollutants, or contaminants at the Site;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. claims based on a failure to meet a requirement of any UAO for this Site that was issued to Settling Defendants;
- g. criminal liability; and
- h. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs.

15. Nothing in this Consent Decree shall preclude the United States from enforcing the provisions hereof in any judicial or administrative proceeding.

XI. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action, or assign or transfer any claim to any third party, against the United States, or its contractors or employees, with respect to Response Costs, the UAO, or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Indiana, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Response Costs.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person whose liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

19. The waiver in preceding Paragraph 18 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the

above criteria if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the RCRA), 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Except as provided in Paragraph 18 (Non-Exempt De Micromis Waiver), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 18 (Non-Exempt De Micromis Waiver) the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. The Parties agree, and by entering this Consent Decree this Court finds, that Settling

Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C.

§ 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Response Costs.

22. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by the United States set forth in Section IX.

XIII. ACCESS

24. Commencing upon the date of lodging of this Consent Decree, the Cure Defendants and the Masterwear Defendants each agree to provide to the United States and its representatives, including EPA and contractors, access at all reasonable times to the Site, or to such other property, for the purpose of conducting any response activity related to the Site, including, but not limited to, the following activities:

- a. Monitoring, investigation, removal, remedial, or other activities at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XIV (Access to Information); and
- g. Assessing Settling Defendants' compliance with this Consent Decree.

25. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIV. ACCESS TO INFORMATION

26. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

27. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (e.g., company or firm), and address of the author of the record; 4) the name and title of each

addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

28. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XV. RETENTION OF RECORDS

29. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under

the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

31. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

XVI. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a

change to the other Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-3-08498)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Mark J. Koller (C-14J)
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

As to Settling Defendants:

On behalf of the Cure Defendants:
Frank J. Deveau
Bradley R. Sugarman
Sommer Barnard PC
One Indiana Square, Suite 3500
Indianapolis, Indiana 46204

On behalf of the Masterwear Defendants:
Bruce Kamplain
Norris Choplin & Schroeder LLP
101 West Ohio Street
Indianapolis, Indiana 46204

XVII. RETENTION OF JURISDICTION

33. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVIII. INTEGRATION/APPENDICES

34. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Settling Defendants with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the map of the Site.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

36. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XX. EFFECTIVE DATE

37. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, unless otherwise provided herein.

XXI. SIGNATORIES/SERVICE

38. Each undersigned representative of a Settling Defendant to this Consent Decree and the Deputy Chief of the Environmental Enforcement Section of the United States Department of

Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

39. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

40. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXII. FINAL JUDGMENT

41. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2006 .

JOHN DANIEL TINDER
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Masterwear Corporation, et al.*, Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 3/27/07

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
U.S. Department of Justice
Washington, D.C. 20530

KAREN E. TORRENT
THOMAS A. BENSON
Trial Attorneys
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
United States Attorney

SUSAN W. BROOKS
United States Attorney
Southern District of Indiana

JILL E. ZENGLER
Assistant United States Attorney
10 West Market Street, Suite 2100
Indianapolis, IN 46204

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Masterwear Corporation, et al.*, Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

**FOR U.S. ENVIRONMENTAL PROTECTION
AGENCY**

Date: 12/24/00

RICHARD Q. KARL
Director, Superfund Division (S-6J)
U.S. Environmental Protection Agency,
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

MARK J. KOLLER
Assistant Regional Counsel (C-14J)
U.S. Environmental Protection Agency,
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Masterwear Corporation, et al.*, Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

FOR DEFENDANT LINDA LOU MULL REED

Date: November 14, 2006

Bruce L. Kamplain
Norris Choplin & Schroeder LLP
101 West Ohio Street, Ninth Floor
Indianapolis, Indiana 46204-4213


Agent Authorized to Accept Service on Behalf of Above-signed Party:

Bruce L. Kamplain
Norris Choplin & Schroeder LLP
101 West Ohio Street, Ninth Floor
Indianapolis, Indiana 46204-4213

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Masterwear Corporation*, et al., Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

**FOR DEFENDANT
MASTERWEAR CORPORATION**

Date: November 14, 2006


Bruce L. Kamplain
Norris Choplin & Schroeder LLP
101 West Ohio Street, Ninth Floor
Indianapolis, Indiana 46204-4213

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Bruce L. Kamplain
Norris Choplin & Schroeder LLP
101 West Ohio Street, Ninth Floor
Indianapolis, Indiana 46204-4213

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Masterwear Corporation, et al.*, Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

FOR DEFENDANT JAMES A. REED

Date: November 14, 2006

Bruce L. Kamplain
Norris Choplin & Schroeder LLP
101 West Ohio Street, Ninth Floor
Indianapolis, Indiana 46204-4213

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Bruce L. Kamplain
Norris Choplin & Schroeder LLP
101 West Ohio Street, Ninth Floor
Indianapolis, Indiana 46204-4213

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Masterwear Corporation, et al.*, Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

FOR DEFENDANT WILLIAM J. CURE

Date: 11/30/06

Frank J. Deveau
SOMMER BARNARD P.C.
One Indiana Square, Suite 3500
Indianapolis, Indiana 46032

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Frank J. Deveau
SOMMER BARNARD P.C.
One Indiana Square, Suite 3500
Indianapolis, Indiana 46032

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Masterwear Corporation, et al., Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

FOR DEFENDANT ELIZABETH J. CURE

Date: 11/30/06

Frank J. Deveau
SOMMER BARNARD P.C.
One Indiana Square, Suite 3500
Indianapolis, Indiana 46032

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Frank J. Deveau
SOMMER BARNARD P.C.
One Indiana Square, Suite 3500
Indianapolis, Indiana 46032

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Masterwear Corporation, et al., Civil Action No. 1:05-cv-00373-JDT-WTL, relating to the Masterwear Superfund Site.

**FOR DEFENDANT CURE CONSTRUCTION
CONSULTING, INC d/b/A CURE CONSTRUCTION**

Date: 12/7/06

Frank J. Deveau
SOMMER BARNARD P.C.
One Indiana Square, Suite 3500
Indianapolis, Indiana 46032

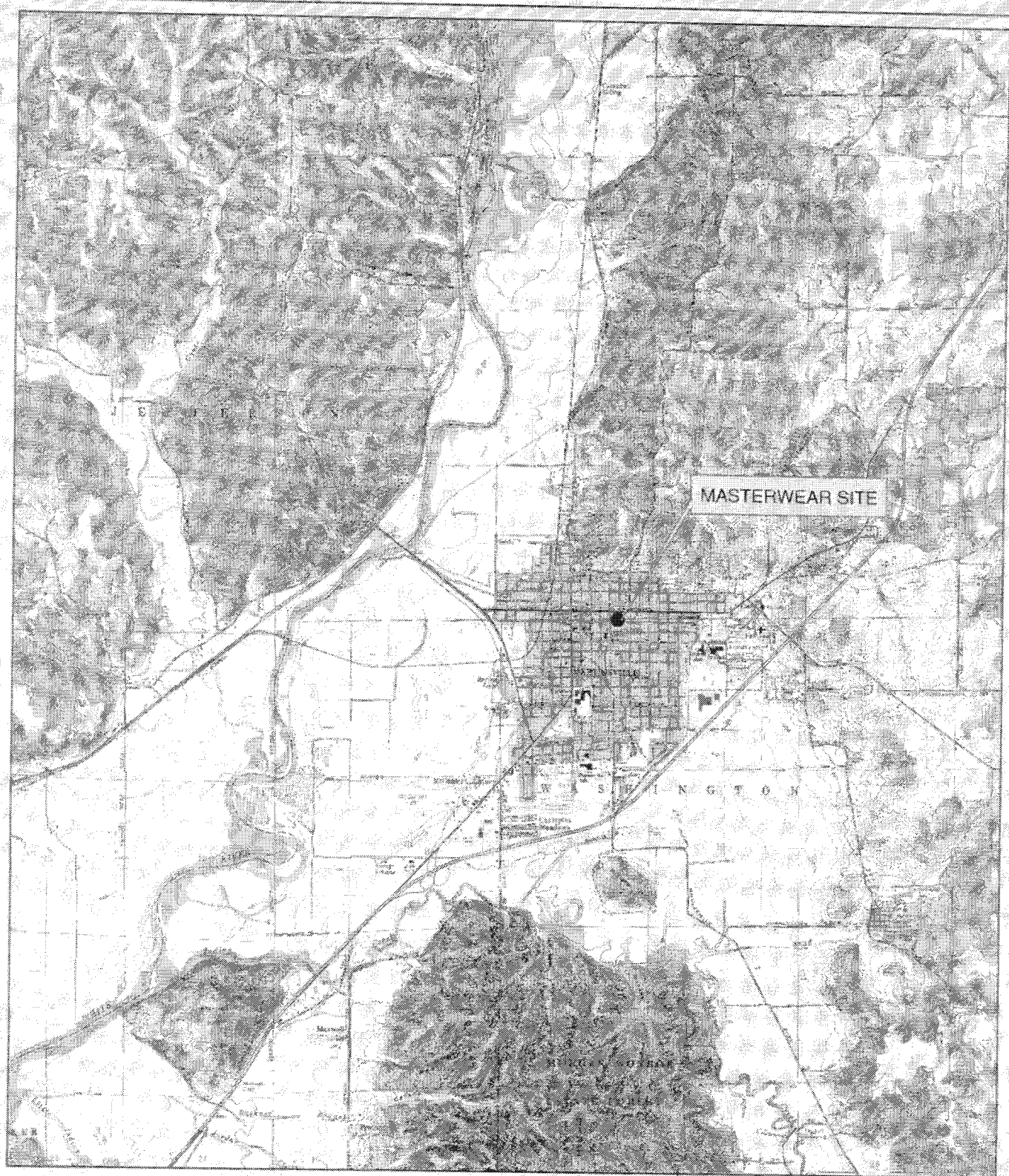
Agent Authorized to Accept Service on Behalf of Above-signed Party:


Frank J. Deveau
SOMMER BARNARD P.C.
One Indiana Square, Suite 3500
Indianapolis, Indiana 46032

APPENDIX A:

Map of the Site

MASTERWEAR SITE LOC FIG 1.mxd (04/15/2004) CHITIMI 04/15/2004



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| MASTERWEAR SITE MARTINSVILLE, MORGAN COUNTY, INDIANA |
| FIGURE 1 SITE LOCATION |
|  Tetra Tech EM Inc. |

SOURCE: U.S. DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES
CONSERVATION SERVICES, FARM SERVICES AGENCY, AND U.S. GEOLOGICAL SURVEY, 1999.